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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,732	02/04/2004	Ralph Herzog	N6613.0001	4040
32172	7590	05/03/2005	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) 41 ST FL. NEW YORK, NY 10036-2714			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/771,732	Applicant(s) HERZOG, RALPH	
	Examiner Jerrold Johnson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/04/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Barber US 1,125,253.

Barber discloses a display structure comprising: a base 1; a gripping member 13 extending from the base and movable into a position for receipt and clasping of an article; and a platform member 9 positioned above the base and coupled to the gripping member such that movement of the platform member moves the gripping member into the position for receipt and clasping of the article.

2. Claims 1-7, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Love US 1,114,998.

Re claim 1, Love discloses a display structure comprising:

a base (bottom of element 1); a gripping member 16,17 extending from the base and movable into a position for receipt and clasping of an article; and a platform

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member 15 positioned above the base and coupled to the gripping member such that movement of the platform member moves the gripping member into the position for receipt and clasping of the article.

Re claim 2, the gripping member comprises: a shell 8 having a first end and a second end; a shaft 14 positioned within and extending outward from the first end of the shell; a set of gripping prongs 17 attached to the shaft and positioned within the shell; and a spring 18 biasing the shaft and the shell for movement relative to each other.

Re claim 3, the movement of the platform member compresses the spring and extends the set of gripping prongs from the second end of the shell for receipt and clasping of the article.

Re claim 4, the shell of the gripping member is attached (indirectly) to the platform member.

Re claim 5, the shaft of the gripping member is attached (indirectly) to the base.

Re claim 6, the set of gripping prongs includes at least two prongs.

Re claim 7, the article is one of a precious stone, a semi-precious stone, and a coin.

Re claim 35, see the rejection of claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 8-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lau US 2004 in view of Katz US 2,144,336, and Love US 1,114,998.

Lau discloses a display case having a housing, having a base, and a peripheral wall extending from the base so as to define an open end, a cover attached to the housing through a hinge, a portal, a magnifying lens.

Lau discloses a gripping member 90 located within the cavity for receipt and clasping of an article.

Katz discloses a gripping member within a cavity of a housing, where the gripping member comprises prongs.

Love, as set forth in detail in the earlier 35 USC 102(b) rejection, discloses the claimed elements of the gripping member, the platform, the base, etc.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the display case of Lau to include the a pronged gripping member, etc. of Love within the display case, as taught by Katz, so as to provide a simple

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inexpensive mechanism for securing a stone within the display case in a manner where the stone is easily removed from the gripping member for evaluation.

4. Claims 21-34, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lau US 2004 in view of Katz US 2,144,336, Love US 1,114,998, Neugebauer US 2,874,828 and Official Notice.

Lau v/ Katz and Love do not disclose a pocket attached to the housing dimensioned to hold a card.

Neugebauer discloses a pocket defined by four corner holders, with a card held within the pocket.

The Examiner further takes Official Notice that product information cards (as is disclosed by Neugebauer), and gift cards are old and well known, and to provide a card within a pocket to the exterior surface of the housing of the display case of Lau v/ Katz and Love (where it would be most accessible) would have been obvious to one of ordinary skill in the art at the time of the invention so that a gift sentiment could be conveyed by a gift giver, or essential product information necessary for the purchase of an item could be provided.

Applicant, of course, has the right to challenge this official notice in response to this decision and demand production of evidence in support thereof, provided such challenge is accompanied by adequate information or argument that, on its face, creates a reasonable doubt regarding the circumstances justifying the official notice. See *In Re Boon*, 439 F2d 724, 169 USPQ 231,234 (CCPA 1971).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



Mickey Yu
Supervisory Patent Examiner
Group 3700